

DATE: May 28, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-15047

## **DECISION OF ADMINISTRATIVE JUDGE**

**MATTHEW E. MALONE**

### **APPEARANCES**

#### **FOR GOVERNMENT**

Erin C. Hogan, Esquire, Deputy Chief Department Counsel

#### **FOR APPLICANT**

*Pro Se*

### **SYNOPSIS**

Applicant has a history of financial difficulties and delinquencies dating to 1993 and still owes over \$13,000.00 in bad debts. While some of her debts can be attributed to unforeseen circumstances, there is insufficient evidence of reasonable efforts to resolve her debts. She filed for Chapter 13 bankruptcy in May 2003, but there is no evidence as to what debts were included or when the debts will be resolved. Applicant has failed to meet her burden of persuasion to mitigate, extenuate, or refute the security concerns under Guideline F (Financial Considerations). Clearance is denied.

### **STATEMENT OF THE CASE**

On September 8, 2003, in accordance with DoD Directive 5220.6, as amended (Directive), the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Directive under Guideline F (Financial Considerations). The SOR further informed Applicant that, based on available information, DOHA adjudicators could not make a preliminary affirmative finding that it is clearly consistent with the national interest to continue Applicant's security clearance. [\(1\)](#)

On October 16, 2003, Applicant answered the SOR (Answer); however, her submission was incomplete in that she failed to specify whether she wanted to have a hearing or to have her case decided on the basis of the written record. She was asked to re-submit her response [\(2\)](#) and did so on November 20, 2003, choosing to have her case decided without a hearing. Applicant has admitted all of the allegations in SOR except for subparagraph 1.h.

On January 22, 2004, DOHA Department Counsel submitted a file of relevant material (FORM) in support of the government's preliminary decision, a copy of which was sent to Applicant on January 29, 2004. Applicant received the FORM on February 17, 2004. She thus had until March 18, 2004, to submit any response, rebuttal, or objection to the FORM. However, Applicant did not submit anything further in her own behalf and the case was assigned to me on March 25, 2004.

## FINDINGS OF FACT

Applicant's admissions are incorporated herein as facts. After a thorough review of the pleadings and exhibits, I make the following additional findings of fact:

Applicant is 40 years old and has been employed by a defense contractor as an administrative associate since June 1999. She previously worked as a legal secretary at the same law firm for ten years. Applicant and her husband have been married since 1996. [\(3\)](#)

Applicant has experienced financial difficulties since about January 1993. She and her husband are currently in Chapter 13 bankruptcy protection, having filed their petition in May 2003. [\(4\)](#) Before 1993, Appellant appears to have had good credit and no financial problems. However, in August 1992, Appellant's mother became ill, lost her job, and moved in with Applicant. This situation caused financial strain because Applicant's mother had no medical insurance and her recovery was lengthy. When Applicant's mother did return to work later in 1992, any money she made went to her medical expenses.

In January 1993, her mother relapsed and was hospitalized until she passed away the following month. By this time, Applicant had fallen behind in her financial obligations and began to accrue credit card debt to help her meet expenses. Chief among these debts was a Discover card account still in arrears for about \$3,600.00. [\(5\)](#) Applicant has not paid this debt, and it was referred to a collection agency in 1993. [\(6\)](#) She feels this debt should not be considered in assessing her suitability for clearance as it is more than seven years old and ostensibly outside the scope of the current investigation. It appears that Applicant was able to pay her other debts at that time. [\(7\)](#)

Applicant experienced a degree of recovery in her financial affairs over the next few years; however, in 1997, when she gave birth to her daughter, she had no medical insurance. The resulting debts to the hospital totaled approximately \$1,300.00 and have not been paid. [\(8\)](#) In 1998, Applicant and her husband bought a used car that turned out to be a lemon. After more than a year of trying to repair the car and/or negotiate a settlement with the car dealer, they executed a voluntary repossession with their lender in March 1999. The resulting deficiency debt of \$8,200.00 has yet to be paid. [\(9\)](#)

In January 2002, Applicant's husband lost his job and was forced to rely on unemployment compensation for income. In September, 2002, he found work but it paid only minimum wage. This situation resulted in a loss of \$10,000.00 in annual income. In October 2002, a credit card account became delinquent in the amount of \$562.00 and was charged off as a business loss. [\(10\)](#) However, Applicant reached a settlement with this creditor and paid the debt in December 2002. In February 2003, Applicant's husband found other work that paid him about \$8.00 per hour, but that job lasted only through the end of April 2003. The couple decided at that point to file for Chapter 13 bankruptcy protection. [\(11\)](#)

As of May 2003, Applicant and her husband were earning \$2,724.00 net monthly. Against this they paid monthly expenses of \$1,271.00 for food, gas, utilities, child care and so on. They were also paying \$1,072.00 each month on their mortgage and two car notes, all of which are in good standing. They have \$381.00 left over each month after expenses. They also own land in an adjoining state, but provided no information about its value. [\(12\)](#)

A credit report obtained by the government on August 15, 2003, shows that Applicant's mortgage was 60 days overdue in May 2002; this is around when her husband was out of work. Another credit report in 2001 listed their mortgage as a "slow pay" account. This account is now current. The same report shows one of her car notes as being 150 days past due. [\(13\)](#)

Applicant also owes approximately \$335.00 for a delinquent telephone account, [\(14\)](#) which was placed for collection in July 1998. Applicant admits this debt but does not know who currently holds the account. [\(15\)](#)

Applicant asserts that a delinquent utility bill listed as \$100.00 in arrears, [\(16\)](#) actually has a balance due of \$53.00. This debt has been delinquent since November 1995, but Applicant claims she has made arrangements to pay it. [\(17\)](#) She has

provided no supporting documentation to back this claim.

Applicant is highly regarded by her present employer and a current co-worker, who has also known her for 25 years. Her current employer says that the trust he has placed in Applicant to handle sensitive albeit unclassified information, such as payroll issues, employee actions and other company matters has been rewarded with solid, reliable performance by the Applicant. Applicant's former employer, a partner in the law firm where she worked, has a similarly positive view of Applicant's reliability and character. [\(18\)](#)

### **POLICIES**

The Directive sets forth adjudicative guidelines [\(19\)](#) to be considered in evaluating an Applicant's suitability for access to classified information. The Administrative Judge must take into account both disqualifying and mitigating conditions under each adjudicative issue applicable to the facts and circumstances of each case. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. Having considered the SOR allegations and having reviewed the record evidence as a whole, I conclude the relevant adjudicative guidelines to be applied here are those conditions listed in the Directive under Guideline F (Financial Considerations).

### **BURDEN OF PROOF**

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest [\(20\)](#) for an Applicant to either receive or continue to have access to classified information. The government bears the initial burden of proving, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If the government meets its burden, it establishes a *prima facie* case that it is not clearly consistent with the national interest for the Applicant to have access to classified information. The burden then shifts to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, the Applicant bears a heavy burden of persuasion. [\(21\)](#)

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. The Government, therefore, has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the Government. [\(22\)](#)

### **CONCLUSIONS**

Under Guideline F, a security concern exists where it is shown an individual is financially overextended, thus being at risk of having to engage in illegal acts to generate funds. [\(23\)](#) Department Counsel has presented sufficient evidence in the FORM to establish a *prima facie* case for disqualification under this guideline and I conclude that Guideline F disqualifying condition (DC) 1 [\(24\)](#) and DC 3 [\(25\)](#) apply here. Applicant has delinquent accounts that have not been paid dating back to 1993.

By contrast, Guideline F mitigating condition (MC) 3 [\(26\)](#) applies in that she and her husband have experienced a variety of difficulties since 1992 that have adversely impacted their individual and joint finances. The debt listed at SOR 1.h certainly resulted from an unforeseen increased financial burden Applicant endured when she had to care for her mother. The debt listed at SOR 1.g can be attributed to her bad luck in purchasing a defective automobile in 1998, and her husband's loss of income in 2002 eventually led to the couple filing for Chapter 13 bankruptcy protection in 2003.

Any mitigation available to Applicant is tempered by several factors. First, this record lacks information about what actions, aside from the bankruptcy, she took over the last 12 years to resolve any of her debts. The fact she was able to settle the credit card debt in SOR 1.i indicates she is sufficiently sophisticated and knowledgeable about her finances to

know how to resolve her debts. Her responses to the SOR and to government interrogatories and interview questions about her finances indicates that she has been aware of her debt problems at all times since 1993. Yet only one debt has been resolved and Applicant waited until she was served with financial interrogatories in May 2003 to file for bankruptcy. Further, it appears that her other delinquent debts are not attributable to unforeseen events. Lastly, Applicant asserts in her answer that a credit card account delinquent since 1993 should not be considered because it has been more than seven years since she accrued the delinquency. This objection undermines any claim she might make that she is trying to put her financial house in order.

Filing for bankruptcy protection can often be a positive indicator of a person's desire to correct financial problems. However, all that can be said about this Applicant's petition is that it was still active according as of August 2003. There is no information available about what debts were declared, what the payment plan entails or when Applicant's debts will be resolved. Therefore, I am unwilling to conclude, based on the foregoing, that MC 6<sup>(27)</sup> applies here. Applicant was afforded ample opportunity to present information in response to the FORM about her current finances and her bankruptcy status, yet she chose not do so. Such information may have assuaged the government's concerns about her suitability; however, on balance I conclude she has failed to mitigate the Guideline F security concerns presented by this record.

I have carefully weighed all of the evidence, and I have applied the disqualifying and mitigating conditions as listed under each applicable adjudicative guideline. I have also considered the whole person concept as contemplated by the Directive in Section 6.3, and as called for by a fair and commonsense assessment of the record as required by Directive Section E2.2.3. Despite the positive recommendations by Applicant's current and former employers, the adverse information about Applicant's financial history raise reasonable doubts about Applicant's ability to protect classified information and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. Absent substantial information to resolve those doubts, which Applicant failed to provide, I cannot conclude it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

### **FORMAL FINDINGS**

Formal findings regarding each SOR allegation as required by Directive Section E3.1.25 are as follows:

Paragraph 1, Financial Considerations (Guideline F): AGAINST THE APPLICANT

Subparagraph 1.a: Against the Applicant

Subparagraph 1.b: Against the Applicant

Subparagraph 1.c: Against the Applicant

Subparagraph 1.d: Against the Applicant

Subparagraph 1.e: Against the Applicant

Subparagraph 1.f: Against the Applicant

Subparagraph 1.g: Against the Applicant

Subparagraph 1.h: For the Applicant

Subparagraph 1.i: Against the Applicant

Subparagraph 1.j: Against the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest

to grant or continue a security clearance for the Applicant. Clearance is denied.

Matthew E. Malone

Administrative Judge

1. Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.
2. Items 3 and 4.
3. Item 6.
4. Answer; Items 8 and 9.
5. SOR subparagraph 1.h.
6. Item 11.
7. Item 7.
8. SOR subparagraphs 1.c - 1.f.
9. SOR subparagraph 1.g.; Item 7, Item 11.
10. SOR subparagraph 1.i.
11. Item 8.
12. Id.
13. Items 9 - 11.
14. SOR subparagraph 1.b.
15. Item 9; Answer.
16. SOR subparagraph 1.i.
17. Answer.
18. Answer (attachments).
19. Directive, Enclosure 2.
20. *See Department of the Navy v. Egan*, 484 U.S. 518 (1988).
21. *See Egan*, 484 U.S. at 528, 531.
22. *See Egan*; Directive E2.2.2.
23. Directive, E2.A6.1.1.
24. Directive, E2.A6.1.2.1. A history of not meeting financial obligations;
25. Directive, E2.A6.1.2.3. Inability or unwillingness to satisfy debts;
26. E2.A6.1.3.3. The conditions that resulted in the behavior were largely beyond the person's control (e.g., loss

of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation);

27. E2.A6.1.3.6. The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.